

EXHIBIT A

January 18, 2019

VIA Electronic Submission

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Drug Enforcement Administration
Attn: FOI/PA Unit (SARF)
8701 Morrissette Drive
Springfield, Virginia 22152

**Re: Freedom of Information Act Request/
Expedited Processing Requested**

To whom it may concern:

This letter constitutes a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, seeking records about the use of facial recognition and other biometric systems from the Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and Drug Enforcement Administration (DEA). The Request is submitted on behalf of the American Civil Liberties Union and American Civil Liberties Union Foundation (jointly known as “ACLU”), and the American Civil Liberties Union of Massachusetts and its educational arm, the American Civil Liberties Union Foundation of Massachusetts (jointly known as “ACLUM”) (collectively, “Requesters”).

I. Background

Since at least 2015, the FBI has operated a Facial Analysis, Comparison, and Evaluation (FACE) Services Unit. According to a 2015 Privacy Impact Assessment available on the FBI’s website, the FACE Services Unit “provides investigative lead support to FBI field offices, operational divisions, and legal attachés” and “may offer face



LEGAL DEPARTMENT

National Office
125 Broad Street,
18th Floor
New York, NY 10004
Tel: (212) 549-2644
Fax: (212) 549-2644
aclu.org

Susan N. Herman
President

Anthony D. Romero
Executive Director

Richard Zacks
Treasurer

recognition support to federal partners.”¹ The FBI also operates the Next Generation Identification-Interstate Photo System, which a 2016 Government Accountability Office report described as “a face recognition service that allows law enforcement agencies to search a database of over 30 million photos to support criminal investigations.”² According to these documents, the FBI has entered into memoranda of agreement with external agencies pertaining to the FBI’s face recognition and analysis programs. As of 2016, per the GAO report, the FBI had entered into at least 16 agreements with state governments to access drivers’ license images, booking photos, corrections photos, or all three, for face recognition search purposes. The Next Generation Identification (NGI) system, according to the FBI’s website, aims to include not just face images but also “future biometric technologies” like voice prints, gait prints, and other forms of biometric identification.³ The FBI’s website calls NGI “the world’s largest and most efficient electronic repository of biometric and criminal history information.”⁴

Amazon Web Services (AWS) provides cloud services for all 17 United States intelligence agencies, including the DOJ and its component agencies the FBI and DEA.⁵ According to recent media reporting, the FBI is testing Amazon’s Rekognition face recognition product, which is part of the suite of software products available on AWS, in a pilot program.⁶ In May 2018, the intelligence community awarded Microsoft a contract enabling all 17 agencies to use Azure Government, Microsoft’s cloud service for public entities.⁷ Microsoft, like Amazon, offers its customers a face surveillance product that runs on its own cloud service; Microsoft’s face surveillance product is called Face API.⁸ Additionally, as of 2015, the FBI has utilized NEC Corporation of America’s “Integra ID

¹ Ernest J. Babcock, FBI, *Privacy Impact Assessment for the Facial Analysis, Comparison, and Evaluation (FACE) Services Unit*, approved May 1, 2015, <https://www.fbi.gov/services/information-management/foipa/privacy-impact-assessments/facial-analysis-comparison-and-evaluation-face-services-unit>.

² Gov’t Accountability Office, *Face Recognition Technology: FBI Should Better Ensure Privacy and Accuracy*, June 15, 2016, <https://www.gao.gov/products/GAO-16-267>.

³ FBI, *Beyond Fingerprints: Our New Identification System*, Jan. 26, 2009, https://archives.fbi.gov/archives/news/stories/2009/january/ngi_012609.

⁴ FBI, *Next Generation Identification (NGI)*, <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi>.

⁵ Frank Konkel, *The FBI is the Latest Intelligence Agency to Partner with Amazon Web Services*, Nextgov, Nov. 29, 2018, <https://www.nextgov.com/it-modernization/2018/11/fbis-counterterrorism-investigations-now-run-amazon/153133/>.

⁶ Frank Konkel, *FBI is Trying Amazon’s Facial Recognition Software*, Nextgov, Jan. 3, 2019, <https://www.nextgov.com/emerging-tech/2019/01/fbi-trying-amazons-facial-recognition-software/153888/>.

⁷ Naomi Nix & Ben Brody, *Microsoft Wins Lucrative Cloud Deal with Intelligence Community*, Bloomberg News, May 16, 2018, <https://www.bloomberg.com/news/articles/2018-05-16/microsoft-wins-lucrative-cloud-deal-with-intelligence-community>.

⁸ See Face, Microsoft Azure, <https://azure.microsoft.com/en-us/services/cognitive-services/face/>.

5 biometric solution software,” which provides facial recognition capabilities, in conjunction with the agency’s NGI system.⁹

The ACLU is concerned about the civil rights and civil liberties implications of the federal government’s use of face recognition and other biometrics to track, identify, and monitor people. If implemented, these capabilities would threaten to grant the government an unprecedented power to pervasively track people’s movements and associations in ways that threaten core constitutional values. We therefore request the following records.

II. Definitions

For purposes of this Request, please apply the following definitions to these listed terms:

“Facial recognition” and “face recognition” mean the automated or semi-automated process of comparing two or more images of faces to determine whether they represent the same individual, and/or the automated or semi-automated process by which the characteristics of an individual’s face are analyzed to determine the individual’s sentiment, state of mind, and/or other propensities including but not limited to level of dangerousness.

“Gait recognition” means the automated or semi-automated process of comparing two or more images or recordings of individuals’ gaits to determine whether they represent the same individual.

“Voice recognition” means the automated or semi-automated process of comparing two or more recordings of human voices to determine whether they represent the same individual.

“Face template” means data corresponding to an image or images of an individual’s face that is unique to that face, for use in a face recognition system.

“Face recognition search” means an automated or semi-automated process whereby an image of a face or a face template (the “probe image”) is compared against a database of face images or face templates in order to attempt to identify the person depicted in the probe image.

“Affect recognition search” means an automated or semi-automated process whereby an image of a face or a face template is analyzed to determine the individual’s sentiment, state of mind, and/or other propensities including but not limited to level of dangerousness.

⁹ *NEC Biometric Solution Becomes First to Provide FBI Rap Back Functionality*, BusinessWire, Aug. 20, 2015, <https://www.businesswire.com/news/home/20150820005061/en/NEC-Biometric-Solution-Provide-FBI-Rap-Functionality>.

“Gait recognition search” means an automated or semi-automated process whereby an image or recording of a person’s gait (the “probe image”) is compared against a database of gait images or recordings in order to attempt to identify the person depicted in the probe image.

“Voice recognition search” means an automated or semi-automated process whereby a recording of a voice (the “probe recording”) is compared against a database of voice recordings in order to attempt to identify the person depicted in the probe recording.

III. Records Sought

Please provide the following records created or received after January 1, 2015:

1. Any policy directives, guidance documents, legal memoranda, policy memoranda, training materials, or similar records concerning the use of face recognition, gait recognition, or voice recognition technology, including but not limited to those records referencing the use of face or voice recognition technology to identify or monitor people engaged in First Amendment protected activity such as protesters and demonstrators.
2. Any face recognition policies, guidelines for running searches, and training manuals pertaining to the FBI’s FACE Services.
3. Any face recognition policies, guidelines for running searches, and training manuals pertaining to the FBI’s Next Generation Identification database.
4. All agreements, memoranda of agreement, memoranda of understanding, or similar records pertaining to any face recognition, gait recognition, or voice recognition program, including any records that concern the sharing of or granting of access to any face images or prints, gait images or prints, or voice recordings or prints, or that concern the sharing, searching of, or granting access to face or voice recognition systems maintained by state or local agencies.
5. All agreements, memoranda of understanding, or similar records pertaining to use of or access to FACE Services or the Next Generation Identification-Interstate Photo System by other federal agencies.
6. A record, broken down by federal agency component, of the number of times other federal agencies have requested access to or assistance from FACE Services or NGI.
7. Records relating to inquiries to companies, solicitations from companies, or meetings with companies about the purchase, piloting, or testing of face recognition, gait recognition, or voice recognition technology and related software and services, including but not limited to communications with vendors, purchase

orders, invoices, RFPs, licensing agreements, documentation of selection, sole source or limited source justification and approval documentation, contracts (including non-disclosure agreements), and other memoranda and documentation. This should include any communications or inquiries about potential use, pilot or purchase of Rekognition, Face API, or other face recognition technology and services from Amazon and Microsoft, as well as any communications or inquiries about potential use, pilot or purchase of facial, gait, or voice recognition technology or services from other companies.

8. Templates or forms for use in submitting images to any face recognition system (which may be known as “submission templates” or by another term).
9. Records related to any audits conducted by the agency or any third party of any face recognition system, voice recognition system, or gait recognition system, including records that reference its accuracy, performance for persons of different race or gender, and/or reliability.
10. Any record reflecting system requirements for accuracy rates or false acceptance rates for any face recognition system, as well as any record reflecting the results of any accuracy testing.
11. Any record reflecting how many photos or face templates your agency can access for purposes of face recognition searches, including if available a list identifying each database, the state or entity that controls that database, and the number of photos per database.
12. Any record reflecting how many of each of the following your agency has conducted (please provide data broken down on a month-to-month basis, if available):
 - a. Face recognition searches
 - b. Affect recognition searches
 - c. Voice recognition searches
 - d. Gait recognition searches
13. Any record reflecting how many times your agency has made or contributed to an arrest of an individual identified through use of each of the following (please provide data broken down on a month-to-month basis, if available):
 - a. Face recognition technology
 - b. Voice recognition technology
 - c. Gait recognition technology
14. Any record reflecting how many times your agency has identified or attempted to identify a person in the custody of your or another law enforcement agency

following that person's arrest using each of the following (please provide data broken down on a month-to-month basis, if available):

- a. Face recognition technology
- b. Voice recognition technology

15. Any record reflecting how many voice recordings or prints your agency can access for purposes of voice recognition searches, including if available a list identifying each database and the number of voice prints per database.
16. Any record reflecting how many gait images, recordings, or prints your agency can access for purposes of gait recognition searches, including if available a list identifying each database and the number of gait prints per database.
17. All communications, including emails, pertaining to the use or potential use of face recognition at protests, demonstrations, or religious locations.
18. All communications, including emails, pertaining to the ACLU's public comments or advocacy related to face recognition, Amazon's Rekognition, or biometric privacy more generally.
19. All communications and documents related to the GAO report 17-489T, "Face Recognition Technology: DOJ and FBI Need to Take Additional Actions to Ensure Privacy and Accuracy," including communications and documents related to the decision to adopt or not adopt the GAO recommendations in this report.
20. All communications, including emails, pertaining to the use of face, voice, or gait recognition to identify people communicating with or suspected of communicating with journalists.

IV. Application for Waiver or Limitation of Fees

The Requesters request a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 28 C.F.R. § 16.10(k)(1); *see also* 5 U.S.C. § 552(a)(4)(A)(iii). The Requesters also request a waiver of search fees on the grounds that they qualify as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

- A. *The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the Requesters.*

As discussed above, this Request concerns the agency's use of face recognition technology. Little information is publicly available regarding the uses of face recognition technology by federal law enforcement agencies, so the records sought are certain to contribute significantly to the public's understanding of this topic. For example, the public does not know whether the FBI, DEA, and other federal law enforcement agencies have purchased face recognition technology from private companies and if so, which ones or on what terms. Nor does the public have current information about agreements between federal law enforcement agencies and state and local agencies to share or request access to their respective face recognition systems. The public also lacks information about federal law enforcement agencies' current policies governing the use of face recognition technology, limitations on how and when it can be used, and accuracy rates of the face recognition systems in use or development.

There is broad public interest in this and other information about the purchase and use of face recognition technology by federal law enforcement agencies, as evidenced by the many press reports on the subject in recent months.¹⁰ Moreover, federal oversight bodies, lawmakers, and others have expressed concern about deficiencies in privacy and accuracy safeguards in FBI and DOJ face recognition systems.¹¹ The information sought

¹⁰ See, e.g., Eugene Kim, *Shareholders are Pressuring Amazon to Stop Selling Facial Recognition Tech to the Government*, CNBC, Jan. 17, 2019, <https://www.cnbc.com/2019/01/17/amazon-shareholders-pressure-against-selling-rekognition-to-government.html>; Jake Kanter, *Amazon Investors are Cranking Up the Pressure on Jeff Bezos to Stop Selling Facial Recognition Tech to Government Agencies*, Business Insider, Jan. 17, 2019, <https://www.businessinsider.com/amazon-shareholders-submit-resolution-on-halting-rekognition-sales-2019-1>; Danielle Abril, *Coalition Pressures Amazon, Microsoft, and Google to Keep Facial Recognition Surveillance Away from Government*, Fortune, Jan. 16, 2019, <http://fortune.com/2019/01/15/coalition-pressures-amazon-microsoft-google-facial-recognition-surveillance-government/>; Frank Konkel, *FBI is Trying Amazon's Facial Recognition Software*, Nextgov, Jan. 3, 2019, <https://www.nextgov.com/emerging-tech/2019/01/fbi-trying-amazons-facial-recognition-software/153888/>; David Owen, *Should We Be Worried About Computerized Facial Recognition?*, New Yorker, Dec. 17, 2018, <https://www.newyorker.com/magazine/2018/12/17/should-we-be-worried-about-computerized-facial-recognition>; Jay Stanley, *Secret Service Announces Test of Face Recognition System Around White House*, ACLU Free Future, Dec. 4, 2018, <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/secret-service-announces-test-face-recognition>; Adam Mazmanian, *Secret Service Tests Facial Recognition System at the White House*, FCW, Nov. 28, 2018, <https://fcw.com/articles/2018/11/28/white-house-facial-recog.aspx>; Jake Laperruque & Andrea Peterson, *Amazon Pushes ICE to Buy Its Face Recognition Surveillance Tech*, Daily Beast, Oct. 23, 2018, <https://www.thedailybeast.com/amazon-pushes-ice-to-buy-its-face-recognition-surveillance-tech>; Drew Harwell, *Amazon Met with ICE Officials Over Facial-Recognition Systems That Could Identify Immigrants*, Wash. Post, Oct. 23, 2018, <https://www.washingtonpost.com/technology/2018/10/23/amazon-met-with-ice-officials-over-facial-recognition-system-that-could-identify-immigrants>; Jon Schuppe, *Facial Recognition Gives Police a Powerful New Tracking Tool. It's Also Raising Alarms*, NBC News, July 30, 2018, <https://www.nbcnews.com/news/us-news/facial-recognition-gives-police-powerful-new-tracking-tool-it-s-n894936>.

¹¹ See, e.g., Gov't Accountability Office, *Face Recognition Technology: DOJ and FBI Need to Take Additional Actions to Ensure Privacy and Accuracy*, Mar. 22, 2017, <https://www.gao.gov/assets/690/683549.pdf>; Hearing of House Comm. On Oversight & Gov't Reform, *Law Enforcement's Use of Facial Recognition Technology*, Mar. 22, 2017; Olivia Solon, *Facial Recognition Database Used by FBI is Out of Control*, House Committee Hears, Guardian, Mar. 27, 2017, <https://www.theguardian.com/technology/2017/mar/27/us-facial-recognition-database-fbi-drivers-licenses-passports>.

in this request will contribute significantly to public understanding of the operations or activities of the government.

The Requesters are not filing this Request to further their commercial interest. The ACLU and ACLUM are non-profit 501(c)(3) and 501(c)(4) organizations. Any information disclosed by these organizations as a result of this Request will be available to the public at no cost. The ACLU and ACLUM regularly make information—including information obtained via FOIA requests—available to the public via their websites, electronic newsletters, print publications, and other means. All of these are furnished to members of the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent providing fee waivers for noncommercial requesters. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

B. Requesters are representatives of the news media and the records are not sought for commercial use.

Requesters also request a waiver of search fees on the grounds that the ACLU and ACLUM qualify as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 28 C.F.R. § 16.10(c)(1)(i), (d)(1), (k)(2)(ii)(B). Requesters meets the statutory and regulatory definitions of a "representative of the news media" because they are each an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III).

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 900,000 people. The ACLU also publishes regular updates and alerts via email to over 3.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 4 million social media followers. The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU and ACLUM also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,¹² and ACLU

¹² See, e.g., Press Release, ACLU, New Documents Reveal Government Plans to Spy on Keystone XL Protesters (Sept. 4, 2018), <https://www.aclu.org/news/new-documents-reveal-government-plans-spy-keystone-xl-protesters>; Press Release, ACLU, ACLU Obtains Documents Showing Widespread Abuse of Child Immigrants in U.S. Custody (May 22, 2018), <https://www.aclu.org/news/aclu-obtains-documents-showing-widespread-abuse-child-immigrants-us-custody>; Press Release, ACLU, ACLU Demands CIA Records on Campaign Supporting Haspel Nomination (May 4, 2018), <https://www.aclu.org/news/aclu-demands-cia-records-campaign-supporting-haspel-nomination>; Press Release, ACLU, Advocates File FOIA Request For ICE Documents on Detention of Pregnant Women (May 3, 2018), <https://www.aclu.org/news/advocates-file-foia-request-ice-documents-detention-pregnant-women>; Press Release, ACLU, Civil Rights Organizations Demand Police Reform

and ACLUM attorneys and advocates are interviewed frequently for news stories about documents released through FOIA requests.¹³

Similarly, the ACLU and ACLUM publish reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.¹⁴ The ACLU and ACLUM also regularly publishes books,

Documents from Justice Department (Jan. 4, 2018), <https://www.aclu.org/news/civil-rights-organizations-demand-police-reform-documents-justice-department>; Press Release, ACLU, ACLU Files Lawsuits Demanding Local Documents on Implementation of Muslim Ban (Apr. 12, 2017), <https://www.aclu.org/news/aclu-files-lawsuits-demanding-local-documents-implementation-trump-muslim-ban>; Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, ACLU Sues for Bureau of Prisons Documents on Approval of CIA Torture Site (Apr. 14 2016), <https://www.aclu.org/news/aclu-sues-bureau-prisons-documents-approval-cia-torture-site>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.

¹³ See, e.g., Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavioral Screen Program*, Intercept, Feb. 8, 2017, <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program> (quoting ACLU attorney Hugh Handeyside); Larry Neumeister, *Judge Scolds Government over Iraq Detainee Abuse Pictures*, Associated Press, Jan. 18, 2017, <https://www.apnews.com/865c32eef4d457499c017eb837b34dc> (quoting ACLU project director Hina Shamsi); Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Surveillance*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nathan Freed Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

¹⁴ See, e.g., ACLU, *Bad Trip: Debunking the TSA’s ‘Behavior Detection’ Program* (2017), https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most* (Aug. 8, 2016), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (2016), <https://www.aclu.org/report/leaving-girls-behind>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>.

“know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>. The ACLU and ACLUM also publish, analyze, and disseminate information through their heavily visited websites, www.aclu.org and www.aclum.org. The websites address civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contain many thousands of documents relating to the issues on which the organizations are focused. The websites also serve as a clearinghouse for news about ACLU cases, including analysis about case developments and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU and ACLUM provide the public with educational material, recent news, analyses of relevant congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.¹⁵

The ACLU website includes many features on information obtained through the FOIA. The ACLU maintains an online “Torture Database,” a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of its contents relating to government policies on rendition, detention, and interrogation.¹⁶ The ACLU has also published a number of charts and

¹⁵ See, e.g., *ACLU v. DOJ*—FOIA Case for Records Relating to Targeted Killing Law, Policy, and Casualties, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-case-records-relating-targeted-killing-law-policy-and-casualties>; Executive Order 12,333—FOIA Lawsuit, ACLU Case Page, <https://www.aclu.org/cases/executive-order-12333-foia-lawsuit>; ACLU Motions Requesting Public Access to FISA Court Rulings on Government Surveillance, ACLU Case Page, <https://www.aclu.org/cases/aclu-motions-requesting-public-access-fisa-court-rulings-government-surveillance>; *ACLU v. DOJ*—FOIA Lawsuit Demanding OLC Opinion “Common Commercial Service Agreements, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-demanding-olc-opinion-common-commercial-service-agreements>; FOIA Request for Justice Department Policy Memos on GPS Location Tracking, ACLU Case Page, <https://www.aclu.org/cases/foia-request-justice-department-policy-memos-gps-location-tracking>; Florida Stingray FOIA, ACLU Case Page, <https://www.aclu.org/cases/florida-stingray-foia>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida*, (Feb. 22, 2015) <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida?redirect=blog/national-security-technology-and-liberty/aclu-obtained-documents-reveal-breadth-secretive-sting>.

¹⁶ *The Torture Database*, ACLU Database, <https://www.thetorturedatabase.org>; see also *Countering Violent Extremism FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU Database, [https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database; *Targeted Killing FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.](https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database)

explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA.¹⁷

These means of distributing information to the public qualify Requesters as representatives of the news media. *See Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Serv. Women's Action Network v. Dep't of Defense*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”); *Judicial Watch, Inc. v. Dep't of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).

V. Application for Expedited Processing

Requesters seek expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. § 16.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

A. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

Requesters are “primarily engaged in disseminating information” within the meaning of the statute. *See id.* Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. Dep't of Justice*, 321 F. Supp. at 29 n.5 (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and

¹⁷ *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance*, ACLU (Mar. 5, 2009), https://www.aclu.org/sites/default/files/pdfs/safe_free/olc_memos_2009_0305.pdf; *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU (Nov. 29, 2010), https://www.aclu.org/files/pdfs/natsec/faafoia_20101129/20101129Summary.pdf; *Statistics on NSL's Produced by Department of Defense*, ACLU, https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

distributes that work to an audience” to be “primarily engaged in disseminating information”).¹⁸ As explained above in Section III.B of this Request, Requesters regularly disseminate information to the public via print publications, email newsletters, the ACLU and ACLUM websites, and releases to media outlets.

Requesters plan to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(e)(1)(ii). Specifically, they pertain to the government’s use of highly controversial and invasive biometric identification and tracking technologies. As discussed in Sections I and III, *supra*, biometric identity tracking technologies are the subject of widespread public controversy and media attention. The records sought relate to a matter of widespread and exceptional media interest.

Further underscoring the urgency of informing the public about the biometric identification and tracking technologies at issue in this Request is the strong media interest in what little has been revealed publicly about that conduct. *See supra*. Given this media interest and the lack of public information about the basis and need for biometric surveillance technologies at issue, there is an urgent need to inform the public about how the Department of Justice and its component agencies use these tools. Expedited processing is therefore appropriate under 5 U.S.C. § 552(a)(6)(E) and the Department of Justice implementing regulations.

Conclusion

Pursuant to applicable statutes and regulations, the Requesters expect a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii).

If the Request is denied in whole or in part, Requesters ask that you justify all deletions by reference to specific exemptions to FOIA. Requesters expect the release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to withhold any information or deny a waiver of fees.

¹⁸ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Nathan Freed Wessler
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 519-7847
F: (212) 549-2654
nwessler@aclu.org

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Sincerely,



Nathan Freed Wessler
Brett Max Kaufman
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

Kade Crockford
Daniel McFadden
American Civil Liberties Union
of Massachusetts
211 Congress Street
Boston, MA 02110